

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND  
TRANSPORTATION AUTHORITY (“HTA”)

Debtor.

PROMESA

Title III

No. 17 BK 3567-LTS

**STIPULATION MODIFYING THE AUTOMATIC STAY BETWEEN  
THE PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY  
AND TENS DEVELOPMENT, L.L.C.**

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

This stipulation (the “Stipulation”) is made as of September 5, 2017, by and between the Puerto Rico Highways and Transportation Authority (“HTA”) and Tens Development, L.L.C. (the “Movant”).<sup>2</sup>

### **RECITALS**

**WHEREAS**, on May 21, 2017, HTA, by and through the Oversight Board, as HTA’s representative pursuant to PROMESA section 315(b), filed a petition with the United States District Court for the District of Puerto Rico (the “District Court”) under title III of PROMESA (the “Title III Case”);

**WHEREAS**, on August 17, 2017, the District Court entered the *Order Amending Case Management Procedures* (the “Case Management Order”), which revised the *Notice, Case Management and Administrative Procedures* to implement a protocol (the “Lift Stay Protocol”) for filing motions for relief from the automatic stay set forth in Bankruptcy Code sections 362(a) and 922(a), made applicable to the Title III Case by PROMESA section 301(a) (the “Title III Stay”) [Case No. 17 BK 3283, ECF No. 1065];

**WHEREAS**, under the Lift Stay Protocol, Movant is required to (a) send notice (the “Lift Stay Notice”) to counsel to the Oversight Board and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) to advise them of Movant’s intent to seek relief from the Title III Stay at least fifteen (15) business days prior to filing a motion seeking such relief (the “Lift Stay Notice Period”) and (b) meet and confer with HTA during the Lift Stay Notice Period;

**WHEREAS**, on August 28, 2017, Movant sent their Lift Stay Notice to the Oversight Board and AAFAF seeking to lift the Title III Stay to allow Movant’s action against HTA for the alleged inverse condemnation of Movant’s property, captioned Tens Development, L.L.C. v.

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<sup>2</sup> The Financial Oversight and Management Board for Puerto Rico, as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized AAFAF to file this Stipulation on behalf of HTA.

Autoridad de Carretas y Transportación de Puerto Rico, Case No. F DP11-0294 (409) (the “State Court Action”) pending in the Court of First Instance, Carolina (the “State Court”), to proceed to trial in order for the State Court to make a determination on Movant’s claims and just compensation, if appropriate; and

**WHEREAS**, during the Lift Stay Notice Period, HTA and Movant met and conferred and have resolved Movant’s request for relief from the Title III Stay.

**NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among HTA and Movant, as follows:

1. The Title III Stay is hereby modified solely to the limited extent necessary to permit the State Court Action to proceed in order for the State Court to make a determination on Movant’s claims and just compensation, if appropriate; provided, however, that the Title III Stay shall remain in place with respect to the execution and enforcement of any judgment and any provisional remedies.

2. Nothing contained in this Stipulation shall operate as a waiver or modification of the Title III Stay so as to permit the prosecution against HTA or any of the other Title III debtors of any claim by anyone other than Movant as provided for herein, and HTA reserves all rights, defenses, and protections with respect to any matters pending in the Title III Case.

3. HTA and Movant represent and warrant that they are properly and fully empowered to enter into and execute this Stipulation, that they know of no contractual commitment or legal limitation of, impediment to, or prohibition against their entry into this Stipulation, and that the Stipulation is legal, valid, and binding upon them.

4. Neither this Stipulation, nor the settlement provided for herein, nor any statement made, action, or position taken, or document prepared or executed in connection with the negotiation, execution, or implementation of this Stipulation shall be deemed to be, or construed

as, (a) an admission by any party of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit; (b) a waiver of HTA's rights to dispute, contest, setoff, or recoup any claim, including any claims asserted by Movant in the State Court Action and any claims regarding the dischargeability of Movant's claims in a plan of adjustment under PROMESA, or assert any related rights, claims, or defenses and all such rights are reserved; or (c) an approval or assumption of any agreement or contract between the parties under Bankruptcy Code section 365.

5. This Stipulation contains the entire agreement by and between the parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation.

6. This Stipulation shall be construed and interpreted in accordance with the laws of Puerto Rico. For purposes of construing this Stipulation, neither of the parties shall be deemed to have been the drafter of the Stipulation.

7. Electronic copies of signatures on this Stipulation are acceptable, and an electronic copy of a signature on this Stipulation is deemed an original. This Stipulation may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document.

8. This Stipulation may not be modified other than by a signed writing executed by the parties hereto.

9. The District Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

10. This Stipulation shall be immediately effective and enforceable upon approval by the District Court.

**IN WITNESS WHEREOF** and in agreement herewith, by and through their counsel, the parties have executed and delivered this Stipulation as of the date first set forth above.

/s/ Diana M. Perez

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This Order resolves docket entry no. 1239 in Case No. 17-3283 and docket entry no. 259 in Case No. 17-3567.

SO ORDERED.

Dated: September 15, 2017

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge